HENRY I.'S WRIT REGARDING THE LOCAL COURTS

THE text of Henry I.'s writ regarding the local courts, published by Dr. Liebermann in his *Quadripartitus*, p. 165, presents it in a form which renders its interpretation easier than the older text printed by Stubbs in his *Select Charters*, p. 104. For convenience Dr. Liebermann's text is given here:

Henricus, Dei gratia rex Anglorum, omnibus fidelibus suis, Francis et Anglis, salutem! Sciatis, quod concedo et precipio, ut amodo comitatus mei et hundreta in illis locis et eisdem terminis sedeant, sicut sederunt in tempore regis Eadwardi; et non aliter. Et nolo, ut vicecomes meus propter aliquod necessarium suum, quod sibi pertineat, faciat ea sedere aliter. Ego enim, quando voluero, faciam ea satis submoneri pro mea dominica necessitate secundum voluntatem meam. Et si amodo exurgat placitum de divisione terrarum vel de occupatione, si est inter dominicos barones meos, tractetur placitum in curia mea. Et si est inter vavasores alicuius baronis mei honoris, tractetur placitum in curia domini eorum. Et si est inter vavasores duorum dominorum tractetur in comitatu. Et hoc duello fiat, nisi in eis ramanserit. Et volo et precipio, ut omnes de comitatu eant ad comitatus et hundreta, sicut fecerunt in tempore regis Eadwardi; et non remaneant propter aliquam pacem meam vel quietudinem, quin sequantur placita mea et iudicia mea, sicut tunc temporis fecissent.

A simple reading of this writ shows that it falls into two distinct parts. The first, down to the sentence beginning "Et si amodo exurgat," deals with what has been commonly called "the restoration of the ancient courts."[1] Restoration is a somewhat ambiguous word. It may mean no more than that the courts had fallen into disorder in the matters of time and place, or it may mean that they had fallen into decay and disuse, and so needed to be restored as a system. It is evident, I think, from the language of the writ that only the first can be meant. The writ shows clearly that these courts have been meeting constantly, indeed it would seem to be implied that they have been meeting too often, and this inference is strengthened by the form of statement in the Leges Henrici VII., 1,[2] where this writ is referred to. The practice against which this order is especially directed would seem to be the abuse of his position by the sheriff to order the meeting of the local courts at unusual times

[1] See Stubbs, *Cons. Hist.*, I. 425; Liebermann, *Trans. Royal Hist. Soc. N. S.*, VII. 93; "rétablissant les cours de comté." Bémont. *Rev. Crit. Hist. et Lit.*, XXXIII. 469 For the text see also *Hist. MSS. Com.*, XII., App. IX., p. 119.

[2] Stubbs, *Select Charters*, 105.

and places for some purpose of his own. This must now cease, but the king seems to say, to paraphrase the last sentence of this part of the writ: "I cannot promise that extra sessions of the courts will never be called; some necessity really affecting the state may arise which will make them necessary, but if such a case occurs I will see to it that sufficient notice is given to reduce the inconvenience to the smallest possible."

The second part, which follows this sentence, gives rise to suggestions which seem to make it, institutionally considered, much the more important portion of the writ. It will be readily seen that this part concerns three things: (1) what courts shall have jurisdiction in certain cases; (2) a question of procedure in these cases; (3) attendance at the local courts. It is with the first of these points that question immediately arises. Three kinds of cases are mentioned, all concerning land held by feudal tenure. We should expect them to be tried in a feudal court and by feudal law. The first two kinds of cases mentioned call for no comment. A case between two vassals of the king goes into his court; one between two vassals of the same mean lord goes into his court, as we should expect. But the third strikes us with some surprise. A case between the vassals of two different lords goes into the county court. To order a case involving feudal law out of a feudal court into the old local popular court would hardly seem to be possible. Either of two different dispositions of the case would seem to be more natural: that the case should be tried in the court of the defendant, see Leges Henrici c. XXV., or that it should be tried in the court of the first overlord common to both, which in almost all cases at least would be the court of the king, see Cons. of Clarendon c. IX. A suggestion for the solution of this difficulty comes from the Constitution of Conrad II., of 1037. The second paragraph of that document, after providing for the carrying of certain cases directly to the king, closes thus: "Hoc autem de maioribus walvassoribus observetur. De minoribus vero in regno aut ante seniores aut ante nostrum missum eorum causa finiatur." If the king's *missus* is present the local court becomes the king's court and the disposition of the case made by the writ is entirely regular. Can we go so far as to say that this writ gives evidence of the existence of itinerant justice courts as early as 1111, regularly organized to such an extent at least as to be taken for granted?

The second point of this part of the writ, the point regarding procedure, appears to bear directly on this question. Cases of this sort are to be decided by the duel, unless for some special reason it is omitted. It would seem as if the king's meaning might be

stated as follows: the case is to go into the county court, but there need be no fear that this subjects it to the old Saxon methods of trial; the court is the king's, not the old popular court, and the Norman method of trial is preserved. If this interpretation is correct, the sentence implies that this arrangement was not entirely new, but had been of long enough standing at least for this question of procedure to arise and to make it seem to the king advisable to give it a formal answer.

The last sentence of the writ, that which concerns attendance at the local courts, seems to get in this way its most natural interpretation also. Its essential point is that no liberties or immunities are to excuse from attendance when king's pleas are to be tried, that is, when the king's justice is present, exactly the later regulation for the itinerant justice court in the county. If we turn again to the passage in the Leges Henrici c. VII., which a few years later made use of this writ and enlarged upon it, we find some confirmation for this interpretation. VII. 2 states the composition of the county court in terms which, while different in detail, remind us strikingly of those used in the writ of Henry III., of 1231,[1] which is usually used as typical of the composition of the county court which met the itinerant justices in the thirteenth century, and they appear to include the same classes with the possible exception of the burgesses. It is hardly possible to suppose that this is the every-day shire court under the sheriff, acting merely as sheriff. The presence of the bishop is particularly noteworthy. If the ordinary interpretation is to be given to the writ of William I. separating the spiritual and temporal courts, the presence of the bishop in the ordinary county court would not be easy of explanation. If this is a king's court held in the county, his presence is natural and to be expected. This interpretation is rendered almost necessary by the first words of VII. 3: "Agantur itaque primo debita veræ Christianitatis jura; secundo regis placita." This court, whatever it is, tries cases which affect the Church. Apparently we must conclude that this is a king's court, in which case the statement presents no difficulty; or we must modify in a very decided way our understanding of William's legislation on this point, an alternative which is not easy in view of the clearness of the language in which that is expressed.

If this were the whole of the case, I think we should be led to conclude with a good deal of probability that the itinerant justice system had been in operation, as a fairly regular and organized system, from an early date in the reign of Henry I. It is possible

[1] Stubbs, *Select Charters*, 358.

that this is the meaning in any case, but Glanvill shows us, see especially XII. 8, cases which do not differ in principle from those mentioned in this writ going from the feudal court of the barons to the sheriff's county court, which must then have been considered as a court having jurisdiction of civil cases naturally falling in a king's court. The position of the sheriff as justice in the somewhat different matter of pleas of the Crown is too well known to need illustration, but for the time of Henry I. see Leges Henrici c. X. The sheriff seems also to have been called *justitia regis* in the reign of Henry I.[1] Taking these facts into account, all that we can say is that the writ of Henry I. gives evidence that the county court was used as early as this date as the basis of a local king's court with a composition similar to that of the later itinerant justice court, and like it suspending the immunities granted by charter from attendance at the ordinary local courts. If not the itinerant justice court itself, the county court of this writ is its forerunner and furnishes the foundation on which that system was erected at some later date, perhaps in the same reign. As a matter of probability, it is likely that this was occasionally an itinerant justice court from the beginning, and occasionally a sheriff's king's court, and that a regular system of itinerant justices was reached only gradually. I would not, however, insist too strongly on any conclusions from a course of reasoning based on so scanty a body of material, and I have endeavored throughout to suggest rather than to affirm, but the problem which this material presents is an interesting one and deserving of attention.

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[1] See Stubbs, *Cons. Hist.*, I. 420, n. 1, and Liebermann, *Leges. Edw. Conf.*, 73. An example of this usage in Edw. Conf. is found in c. IX., where *justitia regis* can hardly mean any one but the sheriff. Compare c. III. with Hen. c. VII., 3.